

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 147

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Sub-Chapter 1

Organizational Rule

24.147.101 BOARD ORGANIZATION (1) The board of funeral service hereby adopts and incorporates the organizational rules of the department of labor and industry as listed in chapter 1 of this title. (History: 37-19-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

Sub-Chapter 2

Procedural Rules

24.147.201 PROCEDURAL RULES (1) The board of funeral service hereby adopts and incorporates the procedural rules of the department of labor and industry as listed in chapter 2 of this title. (History: 37-19-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.202 CITIZEN PARTICIPATION RULES (1) The board of funeral service hereby adopts and incorporates by this reference the public participation rules of the department of commerce as listed in chapter 2 of this title. (History: 37-19-202, MCA; IMP, 2-3-103, MCA; NEW, Eff. 4/4/77; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

Subchapter 3

Definitions

24.147.301 CONTINUING EDUCATION DEFINITIONS (1) For the purpose of these rules, the following definitions shall apply:

(a) "Continuing education" is defined as an academic course, workshop, seminar, or other accepted activity developed for the purpose of increasing or sustaining the proficiency of the licensee to better serve the public.

(b) "Licensee" means any person licensed to practice as a mortician or as a funeral director in the state of Montana.

(c) "The continuing education compliance period" shall comprise the 12-month period immediately prior to the licensee's renewal date.

(d) "Inactive practitioner" for purposes of these rules shall mean an individual who has applied for inactive status and has been issued an inactive certificate.

(e) "Conditional permission to practice" shall mean written permission granted by the board to an individual to practice as a mortician or funeral director for a period not to exceed one year, during which time he must obtain the required number of hours of continuing education. (History: 37-1-319, 37-19-202, MCA; IMP, 37-1-306, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.302 FUNERAL SERVICE DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Funeral goods" means personal property typically sold or provided in connection with a funeral or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items.

(2) "Funeral services" means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services.

(3) "Guaranteed price agreement" means a prepaid funeral agreement under which, in exchange for the proceeds of a funeral trust or funeral insurance policy, the provider agrees to provide the stated funeral goods and services in the future, regardless of whether or not the retail value of those services and funeral goods exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient.

(4) "Hazardous implants" is defined as being any foreign object or substance that has been surgically or otherwise placed in the human body that may present a threat of injury to the operator or crematory retort or related equipment during the cremation process, or to the public.

(5) "Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition and/or related funeral services and goods and prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser. This term includes the agent, guardian, or other person legally acting on behalf of the person considered the "intended funeral recipient."

(6) "Nonguaranteed price agreement" means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy, the proceeds of which the provider will apply to the current retail value of the prepaid funeral goods and services previously selected at the time of death of the intended funeral recipient, but which agreement shall not bind the provider to provide the services and funeral goods if the value thereof exceeds the funds available at the time of death of the intended funeral recipient.

(7) "Permit" as referred to in 37-19-814, MCA, is defined to be synonymous with "license" for purposes of this chapter.

(8) "Preneed funeral arrangement" or "preneed funeral agreement" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(9) "Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

(10) "Prepaid funeral goods" means funeral goods purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces offered or sold by a cemetery company.

(11) "Prepaid funeral services" means funeral services which are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces offered or sold by a cemetery company.

(12) "Provider" means a licensed mortician or the licensed mortuary by whom the licensed mortician is employed, that is providing or offering to provide at-need, preneed or prepaid funeral arrangements, funeral goods or services.

(13) "Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient. (History: 37-1-131, 37-19-202, MCA; IMP, 37-19-705, 37-19-814, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

Subchapter 4

Substantive Rules

24.147.401 FEE SCHEDULE

(1) Facility application fees	
(a) Mortuary	\$ 250
(b) Mortuary branch facility	250
(c) Crematory	250
(d) Cemetery	1250
(2) Facility inspection or reinspection fees	
(a) Mortuary	200
(b) Mortuary branch facility	200
(c) Crematory	200
(d) Cemetery	200
(3) Individual application fees	
(a) Mortician	250
(b) Crematory operator	200
(c) Crematory technician	200
(d) Mortician intern	220
(4) Activation of inactive license	
(a) Mortician	100
(b) Crematory operator	50
(c) Crematory technician	50
(5) Facility renewal fees (includes annual inspection)	
(a) Mortuary	300
(b) Mortuary branch facility	50
(c) Crematory	300
(d) Cemetery (five-year renewal)	1000
(6) Individual renewal fees	
(a) Mortician - active	200
(b) Mortician - inactive	100
(c) Crematory operator - active	100
(d) Crematory operator - inactive	50
(e) Crematory technician - active	100
(f) Crematory technician - inactive	50
(7) Jurisprudence reexamination fee	100
(8) All fees are nonrefundable.	
(9) Additional standardized fees are specified in ARM 24.101.403.	

(History: 37-1-131, 37-1-134, 37-19-202, 37-19-301, 37-19-303, 37-19-304, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA; IMP, 37-1-134, 37-1-141, 37-19-301, 37-19-303, 37-19-304, 37-19-402, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA; Eff. 12/31/72; AMD, 1979 MAR p. 328, Eff. 3/30/79; AMD, 1981 MAR p. 315, Eff. 3/27/81; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2137, Eff. 12/17/82; AMD, 1984 MAR p. 815, Eff. 5/18/84; AMD, 1987 MAR p. 477, Eff. 5/1/87; AMD, 1987 MAR p. 2088, Eff. 11/13/87; AMD, 1989 MAR p. 2193, Eff. 12/22/89; AMD, 1993 MAR p. 2670, Eff. 11/11/93; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 1998 MAR p. 2959, Eff. 11/6/98; RESCIND, (CI-75), 1999 MAR p. 66, Eff. 1/15/99; AMD, 1999 MAR p. 1201, Eff. 6/4/99; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

24.147.402 MORTICIAN APPLICATION (1) Any person applying to the board for permission to take the examination shall present to the board evidence in the form of:

- (a) certified copy of the transcript of completion of 60 semester credit hours or 90 quarter credit hours from a college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education;
- (b) certified copy of the final transcript from an accredited college of mortuary science accredited by the American Board of Funeral Service or its successor;
- (c) properly completed application form furnished by the department; and
- (d) certified copy of the certification form verifying successful completion of the International Conference of Funeral Service Examining Board's examination.

(2) All applications for licensure by the board will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license. (History: 37-1-131, 37-19-202, MCA; IMP, 37-19-302, 37-19-303, MCA; Eff. 12/31/72; AMD, 1979 MAR p. 328, Eff. 3/30/79; AMD, 1981 MAR p. 1058, Eff. 9/18/81; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1984 MAR p. 815, Eff. 5/18/84; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.403 INSPECTIONS (1) An annual inspection fee as stated in ARM 24.147.401 shall be charged to each licensed mortuary and shall be included in the mortuary annual renewal fee.

(2) A mortuary shall be inspected by the board or its designees in accordance with subchapter 9 of these rules.

(3) A mortuary shall be inspected if its location has changed.

(4) The board shall be notified within 30 days prior to moving or opening a new mortuary so arrangements can be made for inspection prior to opening.

(5) Reinspection shall be made of a mortuary that does not meet the requirements of the board in ARM 24.147.901. (History: 37-1-131, 37-19-202, 75-10-1006, MCA; IMP, 37-19-403, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1992 MAR p. 136, Eff. 1/31/92; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.404 FEE ABATEMENT (1) The Board of Funeral Service adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301. (History: 37-1-131, MCA; IMP, 17-2-302, 17-2-303, 37-1-134, MCA; NEW, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.405 EXAMINATION (1) The licensing examination shall be the national board examination of the Conference of Funeral Service Examining Boards and in addition, the statutes and rules under Title 37, chapter 19, MCA, pertinent portions of Title 46, chapter 4, MCA, relating to county coroner's duties, Title 50, chapter 15, MCA, relating to vital statistics and the rules of the Montana state Department of Public Health and Human Services covering registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing.

(2) A grade of 75 percent must be obtained to pass the statutes and rules examination. (History: 37-19-202, MCA; IMP, 37-19-302, 37-19-303, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2137, Eff. 12/17/82; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1989 MAR p. 2193, Eff. 12/22/89; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2002 MAR p. 84, Eff. 1/18/02; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.406 FEDERAL TRADE COMMISSION REGULATIONS (1) A licensed mortician in Montana shall comply with all Federal Trade Commission (FTC) regulations governing the pricing of funeral services and funeral goods and the method of paying for funeral services, as defined in a manner and a form in compliance with Federal Trade Commission Funeral Industry Practice Rules, 16 CFR 453 (1997) which are hereby incorporated by reference. A copy of the written statement of compliance shall be kept by the mortuary for a period of three years. The FTC rules are available at the board office, 301 South Park, P.O. Box 200513, Helena, MT 59620-0513. (History: 37-19-202, MCA; IMP, 37-19-403, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

Rules 24.147.407 through 24.147.410 reserved

24.147.411 CONTRACT FOR FUNERAL GOODS AND SERVICES

(1) The current address, telephone number and name of the board of funeral service shall appear prominently on any contract for funeral goods and services offered by a private cemetery, crematory or mortuary. At a minimum, the information shall be in 10-point boldface type and make the following statement: "FOR MORE INFORMATION ON STATE CEMETERY, CREMATION AND MORTUARY REGULATIONS CONTACT: BOARD OF FUNERAL SERVICE, 301 SOUTH PARK, P.O. BOX 200513, HELENA, MT 59620-0513; TELEPHONE NUMBER (406) 841-2393."

(2) Every contract of a cemetery authority, including contracts executed in behalf thereof by a cemetery broker or salesman, which provides for the sale by the cemetery authority of an interment plot or any service or merchandise, shall be in writing and shall contain all of the agreements of the parties. Such a contract shall include and disclose the following:

- (a) the total contract price;
- (b) terms of payment, including any promissory notes or other evidences of indebtedness; and
- (c) an itemized statement of charges including, as applicable, the following:
 - (i) charges for an interment plot;
 - (ii) charges for performing burial, entombment or inurnment;
 - (iii) charges for a monument or marker;
 - (iv) charges for any services to be rendered in connection with any religious or other observance at the site of interment or in any facility maintained by the cemetery;
 - (v) amounts to be deposited in the perpetual care and maintenance or special care fund; and
 - (vi) any other charges, which shall be particularized.

(3) In addition to any right of rescission which the purchaser may have under law, a purchaser entering into a contract with a cemetery manager, salesman or authority for the provision of an interment plot or any service or merchandise, may cancel such contract without payment of a revocation fee or other penalty, within five calendar days after the purchaser signs it, by giving written notice of cancellation to the seller at the address specified in the contract. The notice need not be in any particular form, but shall indicate the purchaser's intent not to be bound by the contract. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(4) Every such cemetery contract shall contain in immediate proximity to the space reserved for the purchaser's signature, in a size equal to at least 10-point boldface type, the following statement: "YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH CALENDAR DAY AFTER THE DATE OF THIS TRANSACTION, PROVIDED NO INTERMENT, SUBSTANTIAL SERVICE OR FUNERAL GOODS HAVE BEEN PROVIDED HEREUNDER. TO CANCEL, DELIVER OR MAIL WRITTEN NOTICE OF YOUR INTENT TO (NAME AND ADDRESS OF CEMETERY AUTHORITY OR CEMETERY MANAGER)."

(5) Upon receipt of a valid notice of cancellation pursuant to this rule, the cemetery authority or manager having custody of any money or property paid or transmitted by the purchaser on account of the preneed contract, shall return such money or property to the purchaser. The cemetery authority or manager shall promptly notify the trustee if any such money or property has been transmitted thereto prior to receipt of the notice of cancellation. It shall be unlawful for any person to retain money or property received from a purchaser under such contract more than five business days after receiving or being apprized of a valid notice of cancellation.

(6) Notwithstanding other provisions of this rule, the right of cancellation granted hereby shall not be applicable if an interment has been made, or substantial services or merchandise provided, under the terms of the contract. (History: 37-19-807, MCA; IMP, 37-19-807, 37-19-822, 37-19-823, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.412 RECORDS (1) The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated and of the interment of remains on the premises under the person's charge, in each case stating the name of each deceased person, place of death, date of interment, name and address of the mortician and location of grave, niche or crypt.

(2) A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. Transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete and effective when recorded on the books of the cemetery authority. (History: 37-19-807, MCA; IMP, 37-19-807, 37-19-823, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790.)

Subchapter 5

Licensing

24.147.501 LICENSURE OF OUT-OF-STATE APPLICANTS (1) Upon payment of the proper license fee, the board may issue a license to a person who, at the time of application, holds a current, active license in good standing, as a funeral director, mortician or crematory operator, issued by the proper authority of any state. When a person applies for licensure under this provision, the applicant shall provide information from the other state(s), and the board shall determine whether the requirements for obtaining such other license(s) are substantially equivalent to or stricter than the requirements of Montana law, as listed in ARM 24.147.402 and 24.147.1114 and 37-19-302 and 37-19-703, MCA.

(2) Verification of applicant's current license in good standing shall be requested by the applicant to be sent directly from the other state.

(3) "License" shall mean only those granted by other states under statutory provisions.

(4) A completed application form shall be required from the applicant to initiate consideration for licensing.

(5) All applicants for licensure under this rule shall be required to pass a jurisprudence examination, on Montana laws and rules, administered by the board. (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-304, 37-19-302, 37-19-703, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.502 INACTIVE STATUS AND ACTIVATION (1) A licensee may place the license on inactive status by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired, and paying the appropriate fee. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the renewal fee annually to maintain license status.

(a) A mortician, funeral director, crematory operator, or crematory technician who has maintained valid licensure in the state of Montana for a period greater than 49 years may request that their license be placed on inactive "emeritus" status. An inactive emeritus licensee will be exempt from payment of any fee for annual renewal of their inactive license; but all other provisions and procedures relating to inactive status and reinstatement to active status will apply. The board, at its discretion, may provide other recognition or distinction for emeritus licensees.

(2) A licensee may not practice any mortician, funeral director, intern, crematory operator or crematory technician work in the state of Montana while the license is in an inactive status.

(3) Upon application and payment of the appropriate fee, the board may activate an inactive license if the applicant does each of the following:

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana;

(b) presents satisfactory evidence that the applicant has attended six hours of continuing education which comply with the continuing education rules of the board for each year or portion of a year that licensee has been inactive, not to exceed 12 hours;

(c) submits certification from the licensing body of all jurisdictions where the applicant is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status, including the extent of the disciplinary treatment imposed; and

(d) successfully completes a Montana state rule examination, if applicant has been on inactive status for more than five years.

(4) The board may grant conditional permission, not to exceed one year, allowing the applicant to practice while obtaining the required continuing education hours set forth above. No extension of the one year conditional practice permission shall be granted. (History: 37-1-131, 37-1-319, 37-19-202, MCA; IMP, 37-1-319, MCA; NEW, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.503 CONDITIONAL PERMISSION TO PRACTICE WHILE ON INACTIVE STATUS (1) Conditional permission to practice while on "inactive status" to assist in situations those licensed mortuaries where the licensed mortician is called away by illness or other emergency.

(2) Conditional permission will be granted for a specific period of time, but no more than 60 days.

(3) Practicing beyond 60 days will be considered as an active practitioner and must meet the continuing education requirements as other licensed practitioners as described in ARM 24.147.2101. (History: 37-19-202, MCA; IMP, 37-19-316, MCA; NEW, 1985 MAR p. 1610, Eff. 11/1/85; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.504 INTERNSHIP (1) The registered intern must complete all of his internship in the state of Montana and must report any change of sponsoring mortician within ten days to receive credit towards the 12 months internship.

(2) To qualify, an intern must be a full-time employee at a licensed mortuary under the supervision of a licensed mortician and assist in the complete funeral (embalming, dressing, arrangement of funeral) of at least 25 bodies.

(a) At least six months of the internship period must be served under the supervision of the same licensed mortician.

(3) An intern may apply to the board for special consideration in cases involving closure of firm, hardship due to illness or death of supervising mortician, illness of intern or such other emergency that may occur.

(4) Internship must be completed within three years of passing the examination.

(a) If after a three-year period from passing the exam, the internship has not been completed, the intern may apply for reexamination of state law and rules, and upon passing begin his internship anew.

(b) No credit will be given for prior time served in an internship.

(5) An intern mortician may perform all the duties and functions of a licensed mortician, as allowed and directed by the supervising mortician, who remains responsible for the professional actions of the intern.

(a) "Supervision" means the extent of oversight required in the judgement of the supervisor, considering the circumstances of training, experience, judgement and professional development of the intern. (History: 37-19-202, MCA; IMP, 37-19-304, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1985 MAR p. 1610, Eff. 11/1/85; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.505 RENEWALS (1) Renewal notices will be sent as specified in ARM 24.101.414.

(2) All licenses, whether individual or establishment, with the exception of cemeteries, must be renewed pursuant to 37-1-141, MCA. The renewal date is set by ARM 24.101.413.

(3) Renewals that are in any manner incomplete on receipt by the department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal must:

(a) be accompanied by the appropriate renewal fee. Checks returned to the department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received;

(b) include an affidavit of continuing education if required for the license being renewed as specified in ARM 24.147.2101; and

(c) be accompanied by any other material or documentation the board may require for renewal as identified on the renewal notice.

(4) Completed renewals submitted to the board after the date specified in ARM 24.101.413 shall be considered late and subject to a late penalty fee as specified in ARM 24.101.403.

(5) The provisions of ARM 24.101.408 apply. (History: 37-1-141, 37-19-202, 37-19-301, MCA; IMP, 37-1-141, 37-19-301, MCA; NEW, 2002 MAR p. 793, Eff. 1/18/02; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

24.147.506 RENEWAL OF CEMETERY LICENSE (1) All cemetery licenses must be renewed every five years beginning on July 1, 2000.

(2) Prior to the renewal deadline date, the department will mail a renewal notice to the cemetery's preferred mailing address on file with the department. Failure to receive such renewal notice shall not relieve the licensee of the licensee's obligation to renew and pay renewal fees in a timely manner.

(3) Renewals that are in any manner incomplete on receipt by the department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal must:

(a) be accompanied by the appropriate renewal fee. Checks returned to the department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received; and

(b) be accompanied by any other material or documentation the board may require for renewal as identified on the renewal notice.

(4) Complete renewals submitted to the department after the renewal deadline date shall be considered late and subject to a late penalty fee in addition to the renewal fee. In the event of a late renewal, the licensee may be subject to disciplinary action by the department for unlicensed practice. (History: 37-19-814, MCA; IMP, 37-19-814, MCA; NEW, 2006 MAR p. 1169, Eff. 5/5/06.)

Subchapters 6 through 8 reserved

Subchapter 9

Mortuary Requirements

24.147.901 SANITARY STANDARDS - PREPARATION ROOM (1) The preparation room shall be maintained in a clean and sanitary condition at all times.

(2) The floors and walls of such room shall have tile, concrete or other nonporous materials covering the floor from wall to wall so that the preparation room may be kept in a sanitary condition at all times.

(3) Preparation rooms shall contain only the articles, facilities and instruments necessary for the preparation of dead human bodies.

(4) Such preparation room shall be equipped with proper sewerage, waste disposal and drainage facilities and systems.

(5) The doors and windows of the preparation room shall be constructed so as to obstruct any view from the outside, properly screened and must provide proper ventilation for the room.

(6) All tables, hoppers, sinks, receptacles, instruments and other appliances in such rooms shall be thoroughly cleansed and disinfected immediately at the conclusion of each operation.

(7) The preparation room shall be strictly private and clearly so labeled on each door by a sign reading "private," or "authorized personnel only" or "no admittance." No one shall be allowed in the room while a dead human body is being prepared except persons authorized by a licensed mortician.

(8) Waste and refuse shall be disposed of in a sanitary manner. Infectious wastes and sharps must be stored for disposal and disposed of in accordance with Title 75, chapter 10, part 10, MCA. (History: 37-19-202, 75-10-1006, MCA; IMP, 37-19-403, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1992 MAR p. 136, Eff. 1/31/92; AMD, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.902 DISCLOSURE STATEMENT ON EMBALMING (1) A licensed mortician shall include a statement on written contract materials intended for the public as to the conditions under which embalming is required, which statement shall be in accordance with Department of Public Health and Human Services rules on embalming.

(2) The following language shall be included with the requirement of (1): "Except in special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." (History: 37-19-202, MCA; IMP, 37-19-315, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.903 TRANSFER OR SALE OF MORTUARY LICENSE (1) Upon the transfer or sale of a mortuary, the original license number may be retained by the mortuary facility upon written request to the board.

(2) Whenever ownership is transferred outside existing ownership of any mortuary, cemetery or crematory, the mortuary, cemetery or crematory shall notify the board. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50 percent of the equitable ownership of a mortuary is transferred in a single transaction, or in a related series transaction, or in a related series of transactions to one or more persons, associations or corporations. The notice shall specify the address of the principal offices of the mortuary, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and the stockholders.

(3) Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the mortuary is located within 30 days of the change of ownership. The notice shall specify the address of the principal offices of the mortuary, whether changed or unchanged, and shall specify the name and address of each new owner and each stockholder owning more than 5 percent of the stock of each new owner. (History: 37-19-202, 37-19-403, MCA; IMP, 37-19-403, MCA; NEW, 1987 MAR p. 2088, Eff. 11/13/87; AMD, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790.)

Subchapter 10 reserved

Subchapter 11

Crematory Rules

24.147.1101 CREMATORY FACILITY REGULATION (1) Each location of a crematory facility is considered a separate location and must be licensed separately from a mortuary, even though they may share the same common building.

(2) The crematory facility shall comply with all applicable local, state and federal building codes.

(3) A licensed crematory shall notify the board office promptly, in writing, of any change of crematory operator.

(4) The telephone number of the fire department or rural fire district serving the crematory facility shall be posted in large bold numbers in a conspicuous place near all telephones in the crematory facility as well as in the office, if attached to a mortuary facility.

(5) The crematory operator is responsible for the maintenance and safe operation of equipment used in cremations.

(6) All crematory facilities shall be kept and maintained in a clean and sanitary condition and all appliances used in the cremation process of dead human bodies shall be thoroughly cleansed and disinfected.

(7) Floors and walls shall be constructed of an impervious material.

(8) Used caskets or casket parts shall be placed in a storage room not available to the public view.

(9) When the crematory facility is unable to cremate human remains immediately upon taking custody, the human remains shall be placed in a holding area which shall be marked "private" or "authorized personnel only."

(10) Prior to beginning the cremation process, the crematory must have in its possession, written authorization(s) bearing the original, photocopied, or facsimile signatures of the authorizing agent and, if the death occurred in Montana, the coroner having jurisdiction or the state medical examiner. In addition, the following information must be included in the authorization and kept on record:

- (a) identification of the decedent;
- (b) identification and relationship of the authorizing agent;
- (c) hazardous implants or other medical devices;
- (d) personal property and disposition thereof;
- (e) disposition of cremated remains;
- (f) a description of the cremation process;
- (g) a release from liability per 37-19-707, MCA; and
- (h) any other information pertinent to the individual cremation.

(11) Unauthorized persons may not be permitted in the cremation chamber area while any human remains are being placed within the cremation chamber, being cremated, or being removed from the cremation chamber. For this purpose authorization may be provided by the licensee performing the cremation or the authorizing agent. (History: 37-1-131, 37-19-202, 37-19-703, MCA; IMP, 37-19-702, 37-19-703, 37-19-705, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2005 MAR p. 650, Eff. 4/29/05; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1102 CASKET/CONTAINERS (1) All caskets and alternative containers for cremation shall meet the following standards:

- (a) be able to be closed to provide a complete covering for the human remains;
- (b) be composed of readily combustible materials suitable for cremation;
- (c) be resistant to leakage or spillage;
- (d) be sufficient for handling with ease;
- (e) be able to provide protection for the health and safety of crematory personnel.

(2) The crematory facility, at its discretion, has the right to remove noncombustible materials such as handles or rails from caskets or containers prior to cremation and to discard them with similar materials from other cremations and other refuse in a nonrecoverable manner. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-705, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1103 SHIPPING CREMATED HUMAN REMAINS (1) Cremated human remains sent through the U.S. mail must be marked, registered, sealed and properly addressed.

(2) Cremated human remains may also be shipped through a common carrier that has an internal tracing system.

(3) Cost of mailing or shipping shall be paid by the authorized agent. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-705, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; TRANS, from Commerce, 2002 MAR p. 790.)

Rules 24.147.1104 through 24.147.1109 reserved

24.147.1110 IDENTIFYING METAL DISC (1) It shall be the responsibility of the crematory operator, crematory technician or mortician to see that an identifying metal disc is attached to each receptacle containing human remains. When remains are to be cremated, the disc initially shall be secured to the top of the head end of the casket or alternate container. During the cremation process the disc shall be placed on the control panel, outside the retort.

(2) The identifying metal disc shall be held on the outside control panel of the retort. The disc shall then be placed with the cremated remains inside the urn and the plastic liner.

(3) The number of the identifying metal disc shall be written plainly and permanently on the outside of each receptacle containing human remains when the remains are delivered to a cemetery, columbarium or mausoleum.

(4) In the case of scattering of cremated remains by a licensee, the identifying metal disc shall be made a part of the licensee's permanent record. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-704, 37-19-705, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1111 PROCESSING OF CREMATED REMAINS (1) Upon completion of the cremation process, the recoverable residual of the cremation process shall be removed from the cremation chamber and the cremation chamber swept clean. All nonhuman residue shall be separated from the residue of human remains and placed in an enclosed, puncture-resistant container, and securely taped or capped to prevent the loss or exposure of contents during waste disposal. The residual cremated human remains shall be placed within a container or tray in such a way that will ensure against commingling with other cremated remains. The identifying metal disc shall be removed from the control panel area and attached to the container or tray of cremated human remains to await final processing.

(a) The authorizing agent may specify that recoverable nonhuman residue that can be identified, in a manner satisfactory to the crematory operator in charge, as being related to that cremation may be returned to the custody of the authorizing agent.

(2) The recoverable residual of the cremation process shall undergo final processing.

(3) Should the cremated remains or processed remains not adequately fill the container's interior dimensions, the extra space may be filled with packing material that will not become intermingled with the cremated remains or processed remains, and then securely closed.

(4) When a temporary container is used to return the cremated remains or processed remains, the container shall be placed within a sturdy box and all box seams taped closed to increase the security and integrity of that container. The outside of the container shall be clearly identified with the name of the deceased person whose cremated remains are contained there. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-704, 37-19-705, 37-19-706, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; AMD, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1112 CREMATORY PROHIBITIONS (1) It is prohibited to cremate fetuses, limbs and body parts from private or public health agencies, medical doctors or colleges and universities unless appropriate permits and releases are provided to the crematory facility.

(2) Copies of such permits and releases shall remain with the crematory facility and the parties contracting for the cremation services.

(3) Cremation of animals or pets of any type, is strictly prohibited in a crematory facility designed for cremation of human remains. (History: 37-19-202, 37-19-703, MCA; IMP, 37-19-704, 37-19-705, 37-19-706, 37-19-707, 37-19-708, MCA; NEW, 1993 MAR p. 2670, Eff. 11/11/93; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1113 DESIGNATION AS CREMATORY OPERATOR OR TECHNICIAN (REPEALED) (History: 37-19-202, MCA; IMP, 37-19-702, MCA; NEW, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; REP, 2005 MAR p. 650, Eff. 4/29/05.)

24.147.1114 LICENSURE AS A CREMATORY OPERATOR (1) Applicants for original licensure as a crematory operator shall submit an application provided by the department and the application fee.

(2) The application shall require evidence that:

(a) applicant is at least 18 years of age;

(b) applicant is a high school, or equivalency program graduate, as shown by certified transcripts, degrees, or certificates of completion;

(c) applicant is of good moral character as shown by two letters of reference.

(History: 37-1-131, 37-19-202, MCA; IMP, 37-19-702, 37-19-703, MCA; NEW, 1995 MAR p. 845, Eff. 5/12/95; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1115 LICENSURE AS A CREMATORY TECHNICIAN (1) Applicants for original licensure as a crematory technician shall submit an application provided by the department and the application fee.

(2) The application shall require:

- (a) name of licensed crematory facility where applicant will be employed;
 - (b) name of supervising licensed crematory operator; and
 - (c) summary of training to be completed by applicant, including subject areas, method of testing, length of training, and name of person providing training.
- (History: 37-1-131, 37-19-202, MCA; IMP, 37-19-702, 37-19-703, MCA; NEW, 1995 MAR p. 845, Eff. 5/12/95; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

Subchapter 12 reserved

Subchapter 13

Cemetery Regulation Rules

24.147.1301 APPLICATIONS FOR CEMETERY LICENSES

(1) Applications for a license to operate a cemetery shall be filed on a form furnished by the department at the principal office of the board. In addition to the payment of the fees, each application shall be accompanied by the following:

- (a) a certified copy of:
 - (i) articles of incorporation, if applicable;
 - (ii) application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both, if applicable;
 - (iii) land use or zoning permit, if applicable; and
 - (iv) perpetual care and maintenance trust agreement executed by the owner, the presiding officer, or other agent;
- (b) a statement signed by a majority and verified by the owner, the presiding officer, or other agent, which shall set forth:
 - (i) names and addresses of the owners, partners, incorporators, directors, officers, and trustees of the perpetual care and maintenance fund, including the person who will be in charge of sales;
 - (ii) a statement setting forth the size, location and topography of, and water available for, the property to be used for cemetery purposes; and
 - (iii) a statement of the amount deposited to the perpetual care and maintenance fund, type of investment made or to be made and the proposed rate of contribution for the future;
- (c) an independent confirmation from the depository or other such proof of deposit of the initial contribution to the perpetual care and maintenance fund;
- (d) an accurate and readable map of the proposed cemetery site (scale not less than one inch to 500 feet) and surrounding area showing number of acres, highways, access roads, etc., and area to be initially developed delineated thereon; and
- (e) such other matters as the board may require by written notice to the applicant. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-814, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1302 MANAGERS (1) Each cemetery for which a new license is required shall be operated under the supervision of a cemetery manager. The applicant for a new cemetery license will designate the cemetery manager. The cemetery company will notify the board within 30 days of a change in the cemetery manager.

(2) Each cemetery manager shall post in a conspicuous place in the office or offices where sales are conducted a legible sign which shall indicate the name of the cemetery manager, as well as the salespeople's names. This sign shall be at least 5 1/2 inches high and 8 1/2 inches wide. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-814, 37-19-822, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1303 CEMETERY CONTRACTS; PRICE DISCLOSURE (1) A contract for the sale of prearranged cemetery services or commodities, the price of which may be modified at the time of delivery of those services or commodities, shall contain the following disclosure statement immediately adjacent to the signature block, with a requirement for initials, in 10-point bold type: "YOU, THE PURCHASER, WILL HAVE TO PAY, AT THE TIME OF NEED, ANY ADDITIONAL CHARGES RESULTING FROM PRICE INCREASES FOR THE FOLLOWING PREARRANGED SERVICES AND COMMODITIES:...". (History: 37-19-807, MCA; IMP, 37-19-822, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1304 PERPETUAL CARE AND MAINTENANCE FUND REPORTS

(1) A cemetery shall be required to submit an annual report. The report must consist of an audit opinion or attestation opinion on a form provided by the board. The report shall consist of an opinion of the accountant or auditor preparing such report. The report must be prepared by an independent certified public accountant or a licensed public accountant, provided that such report fully and accurately discloses the position of the perpetual care and maintenance fund. Failure to provide the annual report shall void the operating license of the cemetery.

(2) Each cemetery company shall file with the board annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the board, a written report in a format prescribed by the board setting forth:

(a) the number of preneed and at-need grave spaces and the number of crypts and niches sold or disposed of under perpetual care and maintenance by specific periods as set forth on the form prescribed;

(b) the amount collected and deposited in both the general and special perpetual care and maintenance funds segregated as to the amounts for crypts, niches and grave spaces by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority;

(c) a statement showing separately the total amount of the general and special perpetual care and maintenance funds invested in each of the investments authorized by law, and the amount of cash on hand not invested, which statement shall actually show financial condition of the funds;

(d) a statement showing separately the location, description, and character of the investments in which the perpetual care and maintenance funds are invested. The statement shall show the valuations of any securities held in the perpetual care and maintenance fund; and

(e) the report shall be verified by the owner, presiding officer, or their agent of the cemetery company, and shall be certified by the accountant or auditor preparing the report.

(3) Any cemetery company that does not file its report within the time prescribed may be subject to disciplinary action as prescribed by the Montana Administrative Procedure Act, and 37-1-304, MCA, including a fine of up to \$1000.

(a) A cemetery company may request waiver or reduction of a fine by making a written request. The request shall be postmarked within 30 days of notice of the fine, and shall be accompanied by a statement showing good cause for the request.

(b) The board may waive or reduce the fine where a timely request is made and where it determines, in its discretion, that the cemetery company has made a sufficient showing of good cause for the waiver or reduction.

(c) The board shall examine the reports filed with it as to the cemetery company's compliance with all relevant statutes, as to the amount of perpetual care and maintenance funds collected and as to the manner of investment of such funds.

(d) In the event that the board requires an audit, the board shall contract with a licensed or certified public accountant and the fee charged by the accountant for the actual cost of the audit must be paid by the cemetery company. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-822, 37-19-823, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1305 AUDIT FEES (1) In the event that the board requires an audit, the board shall contract with a licensed or certified public accountant and the fee charged by the accountant for the actual cost of the audit must be paid by the cemetery company. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-808, 37-19-822, 37-19-823, MCA; NEW, 2004 MAR p. 1622, Eff. 7/23/04; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

Rules 24.147.1306 through 24.147.1309 reserved

24.147.1310 REQUIREMENTS FOR BURIALS (1) Except as provided in (2) and (3), there shall be no less than 18 inches of dirt or turf on top of all vaults or caskets, and no less than six inches of dirt or turf on top of other containers of cremated remains.

(2) Cremated remains placed in an urn or urn vault and covered with at least three-quarters of an inch of concrete, brass, granite, marble or metal plate, affixed to the urn or vault shall be exempt from the requirement of (1).

(3) In the case of consensual double burials, the casket or vault that is on top shall be covered with at least 12 inches of dirt or turf as measured at the time of burial. (History: 37-19-807, MCA; IMP, 37-19-807, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1311 CEMETERY AUTHORITY RULES (REPEALED) (History: 37-19-807, MCA; IMP, 37-19-807, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; TRANS, from Commerce, 2002 MAR p. 790; REP, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1312 RESTRICTIONS ON USE OF CEMETERY FUNDS (1) No person or entity associated with the cemetery company shall directly or indirectly borrow from perpetual care funds, maintenance funds, or any trust funds of the cemetery company. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-822, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1313 TRANSFER OF CEMETERY OWNERSHIP (1) Whenever ownership of any cemetery company is proposed to be transferred, the cemetery company shall notify the board. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50 percent of the equitable ownership of a cemetery company is transferred in a single transaction, or in a related series of transactions to one or more persons, associations, or corporations. The notice shall specify the address of the principal offices of the cemetery company, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and/or the stockholders thereof.

(2) Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the cemetery is located. The notice shall specify the address of the principal offices of the cemetery company, whether changed or unchanged, and shall specify the name and address of each new owner and/or each stockholder owning more than 5 percent of the stock.

(3) When there is a change of ownership pursuant to this rule, the existing license shall become void and a new license shall be obtained from the board.

(4) Every cemetery company shall post and continuously maintain at the main public entrance to the cemetery, a sign specifying the current name and mailing address of the cemetery company, a statement that the name and mailing address of each owner, presiding officer, and/or their agent of the cemetery company may be obtained by contacting the board, and the mailing address of the board. Such signs shall be at least 16 inches high and 24 inches wide and shall be prominently mounted upright and vertical.

(5) The board shall suspend the license of any cemetery company which is in violation of the sign or public notice requirements of this rule. Such license may be reinstated only upon compliance with such requirements. (History: 37-1-131, 37-19-202, 37-19-807, 37-19-816, MCA; IMP, 37-19-816, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

24.147.1314 PERPETUAL CARE AND MAINTENANCE FUNDS (1) Every cemetery company which now or hereafter maintains a cemetery, shall place its cemetery under perpetual care and maintenance and establish, maintain, and operate a perpetual care and maintenance fund. Perpetual care and maintenance funds may be commingled for investment, and the income therefrom shall be divided between the perpetual care and maintenance fund in the proportion that each fund contributed to the principal sum invested. The funds shall be held in the name of the cemetery company or in the name of the trustees appointed by the cemetery company.

(2) The principal of all funds for perpetual care and maintenance funds shall be invested, and the income only may be used for the care, maintenance, additions, improvements, or fixtures to the cemetery property, in accordance with the provisions of law and the resolutions, bylaws, rules, and regulations, or other actions or instruments of the cemetery company and for no other purpose. Perpetual care and maintenance funds shall be maintained separate and distinct from all other funds, and the trustees shall keep separate records thereof.

(3) The cemetery company may from time-to-time adopt plans for the general care and maintenance of its cemetery, and charge and collect from all subsequent purchasers of plots such reasonable sum as, in the judgment of the cemetery company, will aggregate a fund, the reasonable income from which will provide care and maintenance.

(4) The perpetual care and maintenance fund under these provisions shall be kept separate and apart from all other cemetery funds. Separate records and books shall be kept of the perpetual care and maintenance fund. The amount to be deposited in the perpetual care and maintenance fund shall be separately shown on the original purchase agreement and shall be not less than 15 percent of the gross proceeds of each sale of cemetery property. A copy of the agreement shall be delivered to the purchaser. In the sale of cemetery property, no commission shall be paid a manager or salesman on the amount deposited by the purchaser in the fund.

(5) Each cemetery shall at all times maintain and keep within the state of Montana all books, accounts, records, cash and evidences of investments of its general and special care funds. They shall be readily available for inspection and examination by the Board of Funeral Service in accordance with the provisions of the law. (History: 37-1-131, 37-19-202, 37-19-807, MCA; IMP, 37-19-807, 37-19-822, MCA; NEW, 1998 MAR p. 2959, Eff. 11/6/98; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, 5/5/06.)

Subchapter 14 reserved

Subchapter 15

Branch Facilities and Prearranged Funeral Agreements

24.147.1501 BRANCH FACILITY (1) A branch facility need only consist of space for the purpose of visitation and funeral rites. Funeral arrangements and sale of funeral goods and services shall be permitted in this facility. Performance of embalming shall not be permitted. An annual renewal fee is required but no annual inspection will be mandated. (History: 37-1-131, 37-19-202, MCA; IMP, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1502 PREARRANGED, PREFINANCED, OR PREPAID FUNERALS

(1) Mortuaries, crematories and cemeteries shall provide information to allow a continuing opportunity to all persons to consider, in advance and prior to need, the type and prices of the funeral or alternative thereto which best meets their needs. All prearranged, prefinanced or prepaid funerals shall be according to the law and rules of the state of Montana. (History: 37-1-131, 37-19-101, 37-19-202, MCA; IMP, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1503 REQUIREMENTS FOR SALE OF AT-NEED, PRENEED, AND PREPAID FUNERAL ARRANGEMENTS

(1) No person, firm or corporation shall sell or offer to sell, or make or offer to make at-need funeral arrangements, preneed funeral arrangements or prepaid funeral agreements, unless that person is a duly licensed mortician or funeral director.

(2) The following monies shall be construed as trust funds in the possession of a funeral director, mortician, mortuary, cemetery, or any other person, firm or corporation:

(a) any monies paid under or in connection with a funeral trust agreement where:

(i) the funeral trust agreement is intended to provide funeral goods and/or service for the named person referred to in this part as beneficiary, who may or may not be the same person as the purchaser;

(ii) the sale of personal property to be used in connection with a funeral or burial, wherein the delivery of such personal property is not to occur until after the death of the beneficiary of the trust; and/or

(iii) the furnishing of personal services are not rendered until the occurrence of the death of the beneficiary of the trust.

(3) Trust funds shall be deposited within three business days after receipt in a special account maintained exclusively for the deposit of monies in a banking institution, savings or building and loan association or credit union that must have its principal place of business in this state and must be organized under federal and/or Montana law.

(4) Trust funds shall be held on deposit, together with any interest until the personal property has been delivered and the personal services have been rendered, unless sooner repaid, in whole or in part.

(5) Any funeral trust agreement shall include a provision that a preneed purchaser shall receive a receipt for the deposited funds from the depository institution. The funeral trust agreement must include a disclosure to the preneed purchaser that the purchaser should receive the receipt within 30 days, and if the receipt is not received within the 30-day timeframe, the purchaser should contact the preneed seller. (History: 37-1-131, 37-19-202, MCA; IMP, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.1504 PRENEED FUNERAL AGREEMENTS (1) Every preneed funeral agreement executed in this state shall be reduced to writing, and must:

(a) be signed by the provider and by the purchaser or the intended funeral recipient or the intended funeral recipient's guardian, agent or next of kin, and

(b) include at least the following information:

(i) the name, address and telephone number of the mortuary intended to be utilized at the time of the agreement;

(ii) the name and license number of the individual licensee acting as or on behalf of the provider;

(iii) the purchaser's name, address and social security number;

(iv) the name, address and social security number of the intended funeral recipient;

(v) both a copy of the provider's current general price list and an itemized statement of funeral goods and services to be included in the agreement;

(vi) full and complete disclosure of how the agreement is to be funded;

(vii) whether the agreement is a guaranteed price agreement or nonguaranteed price agreement, which term, as applicable, shall be defined in the agreement in accordance with this subchapter; together with complete disclosure of how the planned funeral expenses shall be funded in the event the funds held by the trust are insufficient and means of disposition of any proceeds of the trust in excess of that needed for planned funeral goods and services;

(viii) complete disclosure of rates of interest to be accrued on the invested funds, including any fees to be charged against the invested funds, how those fees are determined and how, when and to whom such fees are paid.

(ix) full identification of the depository institution where the funds will be held, together with all pertinent account numbers or other means whereby the funds may be identified.

(c) provide that all funeral arrangements and prepaid funeral trust agreements are revocable upon demand of the purchaser, if alive, and if not, then by the intended funeral recipient where they are different persons. The amount of any and all moneys paid under or in connection with such an agreement together with any and all interest, if any, accrued thereon while on deposit shall be repaid on demand at any time prior to the delivery of the prepaid funeral goods or the performance of the prepaid funeral services. Upon the death of the intended funeral recipient, the intended funeral recipient's authorizing agent shall have the right to revoke the funeral arrangements and to sever the funeral funding arrangements from the funeral arrangements; except however, as provided in 37-19-708, MCA the means of disposition specified by the preneed funeral agreement may not be changed by the authorizing agent. In those instances where a prepaid funeral agreement is revoked, the moneys used to fund the agreement, including all principal and all accrued interest, shall be paid to:

(i) the purchaser if alive, and if not, then to the personal representative or estate of the deceased purchaser; or

(ii) the intended funeral recipient if the funds originally paid for a prepaid funeral agreement belonged to the intended funeral recipient and the agreement is funded through a trust; or

(iii) the named beneficiaries on the insurance policy if the agreement is funded through a funeral insurance policy.

(d) notwithstanding the provisions of (c) above to the contrary, an agreement may provide that the trust shall be irrevocable during the lifetime of the beneficiary, if at the time of the signing of an agreement, the intended funeral recipient of the trust is an applicant for or recipient of, benefits pursuant to the regulations of any public assistance agency or the medicaid program and utilizing the eligibility criteria of the supplemental social security income program in regard to burial spaces and funds set aside for burial expenses; or, a person who reasonably anticipates applying for, or receiving, such benefits within six months. A prepaid funeral agreement made irrevocable pursuant to this subchapter shall not affect the selection of funeral goods or services or the selection of the funeral home. If the intended funeral recipient of the trust enters into an agreement, reasonably anticipating that the intended funeral recipient will become an applicant for, or recipient of these programs within six months from the execution of the agreement, the agreement shall provide that, in the event the intended funeral recipient does not become an applicant for, or recipient of, any of these programs within the six month period, the trust shall revert to a revocable trust.

(e) in circumstances wherein the agreement is made irrevocable, provisions must be made for a change of provider at the sole discretion of the purchaser or intended funeral recipient, without financial penalty or charge for such a change.

(f) provide that, unless otherwise specified therein, a prepaid funeral agreement anticipates the provision of prepaid funeral goods and services in the area served by the provider. The agreement shall further provide that, if the intended funeral recipient's place of death is in a location other than that served by the provider, alternative funeral arrangements will be necessary unless otherwise provided for in the terms of the agreement.

(g) provide for the provider's substitution of any funeral goods or services to be furnished or rendered thereunder for funeral goods of equal quality, value and workmanship, or services of equal quality and value in the event of the unavailability of any funeral goods or services set forth in the agreement. Any change in the price of the agreement resulting from such substitution of funeral goods and/or services shall be reflected in the statement of funeral goods and services rendered.

(h) provide that, in the case of an agreement funded through a funeral trust, if the purchaser predeceases the intended funeral recipient where they are different persons, and no provision is made within the agreement for designation of the purchaser's successor, then the intended funeral recipient shall automatically assume the legal right to administer the funeral trust as purchaser, including the right to withdraw any and all funds held in the funeral trust, and with all other rights formerly held by the purchaser.

(2) Any provision of any such agreement whereby a person who pays money under or in connection therewith waives any provision of these rules shall be void. (History: 37-1-131, 37-19-101, 37-19-202, MCA; IMP, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.1505 TRUST FUNDS (1) No licensee of the Montana Board of Funeral Service, or any director, officer, or employee of any mortuary, cemetery, crematory, or other provider shall directly or indirectly, for the director or officer, or as the partner or agent of others, borrow any prepaid funeral trust funds, including principal or accrued interest. No such person shall become an endorser or surety for loans to others, nor in any manner be an obligor for money borrowed from or loaned by the prepaid funeral trust. No business entity, of which a mortician, funeral director, mortuary employee, mortuary owner or family member of a mortician or funeral director, mortuary owner, or mortuary employee or business entity in which either of them is in any manner interested, shall borrow any of the funds of a preneed funeral trust. (History: 37-1-131, 37-19-101, 37-19-202, MCA; IMP, 37-19-827, 37-19-828, 37-19-829, MCA; NEW, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

Subchapters 16 through 20 reserved

Subchapter 21

Continuing Education Rules

24.147.2101 CONTINUING EDUCATION REQUIREMENTS (1) The basic requirement for continuing education shall be completion of a minimum of 12 clock hours in a two-year period, with a maximum carry-over from one year to the next of six hours.

(2) Each licensee in this state shall sign an affidavit stating that he/she has completed a minimum of six clock-hours of continuing education courses, which affidavit shall be submitted as a part of his or her renewal application.

(a) Compliance with the requirements of continuing education is a prerequisite for license renewal.

(3) Hours of continuing education credit may be obtained by attending and participating in continuing education courses, workshops, seminars or other activities meeting the requirements herein.

(4) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also meet these qualifications.

(a) The continuing education program must meet the following criteria:

(i) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive funeral service issues. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a mortician. A continuing education program is defined as a class, institute, lecture, conference, or workshop. The following types of continuing education courses must require passage of a test following completion of the course: home study, cassette, videotape or activity delivered by other means.

(ii) The activity itself must be conducted or written by an individual or group qualified by practical or academic experience.

(iii) All acceptable continuing education courses must provide the licensee with documentation of program and attendance, containing at least the following information: full name and qualifications of the presenter; title of the presentation attended; number of hours and date of each presentation attended; name of sponsor; and description of the presentation format.

(b) Implementation for continuing education shall be as follows:

(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity. A maximum of three credits per year by cassette, videotape or tested home study will be allowed.

(ii) No continuing education is required for morticians renewing their license for the first time.

(iii) The board will randomly audit 10 percent of the licensed morticians each year. Audited licensees must provide copies of completion certificates to the board as verification of compliance by the renewal deadline date.

(A) The board will review these audit reports within six months of their receipt.

(B) Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance.

(C) Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure.

(D) Prior to the next consecutive year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements.

(E) Notices will be considered properly mailed when addressed to the last known address on file in the board office.

(F) No continuing education used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) if a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will be considered by the Board of Funeral Service and evaluated on an individual basis.

(v) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance (in the form of programs and documentation of attendance) for a period of two years following submission of a continuing education report.

(5) It is the responsibility of each licensee to finance his or her costs of continuing education. (History: 37-1-319, 37-19-202, MCA; IMP, 37-1-306, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 2000 MAR p. 1630, Eff. 6/30/00; AMD, 2002 MAR p. 84, Eff. 1/18/02; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.2102 SPONSORS (1) The board will recognize courses, programs or other continuing education activities sponsored by Montana Funeral Directors Association (MFDA), Selected Independent Funeral Homes (SIFH), National Funeral Directors Association (NFDA), Independent Funeral Directors Association (IFDA), Federated Funeral Directors of America, National Foundation of Funeral Service, Montana Coroner's Association, Order of Golden Rule, Montana Department of Justice coroner's training programs, Montana Funeral Services, Inc. (MFSI) and funeral industry supplier programs. All other programs must meet the criteria established in ARM 24.147.2101. (History: 37-1-319, 37-19-202, MCA; IMP, 37-1-306, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; AMD, 1995 MAR p. 845, Eff. 5/12/95; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 2002 MAR p. 84, Eff. 1/18/02; TRANS, from Commerce, 2002 MAR p. 790.)

Rules 24.147.2103 through 24.147.2107 reserved

24.147.2108 EXCEPTIONS - NOT ENGAGING IN THE PRACTICE OF FUNERAL SERVICE (1) The board has authority to make a written exception from the continuing education requirements for those persons who certify that they do not intend to engage in the practice of funeral service. Applicants for certificate or license renewal must certify their intention to the board on a notice furnished by the department. The board defines "practice of funeral service" to mean:

- (a) a person engaging in providing shelter, care, and custody of the human dead;
 - (b) the practice of preparing of the human dead by embalming or other methods for burial or other disposition;
 - (c) in making arrangements at or prior to need, financial or otherwise, for the providing of such services and/or the same of funeral merchandise, whether for present or future use; or
 - (d) in general, engaging in the practice or performing any functions of funeral directing and/or embalming as presently known including those stipulated herein.
- (History: 37-1-131, 37-1-319, 37-19-202, MCA; IMP, 37-1-306, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)

24.147.2109 PENALTY FOR NONCOMPLIANCE (1) Morticians or funeral directors who have not requested inactive status and/or have not complied with the requirements of 12 hours of continuing education within a two-year period shall be subject to suspension or revocation of license after hearing. (History: 37-19-202, 37-19-316, MCA; IMP, 37-19-316, MCA; NEW, 1983 MAR p. 273, Eff. 4/1/83; TRANS, from Commerce, 2002 MAR p. 790.)

Subchapter 22 reserved

Sub-Chapter 23

Unprofessional Conduct

24.147.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing 37-1-319, MCA, the board defines unprofessional conduct to include, but not be limited to, the following:

(a) solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether such solicitation occurs after death or while death is impending; providing, that this shall not be deemed to prohibit general advertising;

(b) employment by the licensee of persons known as "cappers", or "steerers", or "solicitors", or other such persons to obtain the services of a holder of a license for the practice of funeral service;

(c) employment directly or indirectly of any apprentice, agent, assistant, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions for solicitation of dead human bodies for a particular mortuary, mortician, or crematory;

(d) the direct or indirect payment or offer of payment of a commission by the licensee, his agent, assistants or employees for the purpose of securing business for that particular mortuary, mortician, or crematory; provided however, that compliance with a state pre-need law shall not constitute a violation thereof;

(e) failing to exercise appropriate supervision over interns who are authorized to practice only under the supervision of the licensed mortician;

(f) allowing the licensee's license number to be placed on a death certificate or any other official form of any dead human body as the mortician or funeral director, if the licensee did not prepare the body or supervise the final disposition of that body;

(g) using any funeral merchandise previously used without informing new consumer or person selecting and/or paying for the use of the merchandise that the merchandise has been used;

(h) failure to provide funeral goods that the consumer selected, or substitution of funeral goods or services without the consumer's knowledge or consent;

(i) violation of any of the provisions of Title 37, chapter 19, MCA, and/or ARM Title 24, chapter 147;

- (j) violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation or final disposition of dead human bodies;
- (k) refusing to properly release a dead human body to the custody of the person or entity who has the legal right to effect such release;
- (l) knowingly making any false statement on a certificate of death;
- (m) violation of applicable statutes or regulations of the state of Montana or any other state involved with the pre-arrangement and/or pre-financing of a funeral;
- (n) discriminating in services because of race, creed, color, national origin or medical condition;
- (o) knowingly making false statements regarding other licensees;
- (p) permitting non-licensed personnel to make arrangements for a funeral;
- (q) personnel of a mortuary, crematory or cemetery whose services are desired shall not recommend auxiliary services or funeral goods or deprive the consumer the freedom of choice for such services or funeral goods;
- (r) removing or possessing dental gold, dental silver, or any other personal effects, from deceased persons without specific written permission of the authorizing agent;
- (s) attaching, detaining, claiming to detain or failing to release any human remains or human cremated remains for any debt or demand, or upon any pretended lien or charges upon delivery of authorization for release of remains;
- (t) failure to deposit or keep on deposit, misapply, misappropriate, or to repay on valid demand, any and all moneys received in payment for pre-need funeral goods or services;
- (u) failure to comply with statutory or board requirements for pre-need or prepaid arrangements, agreements, or trusts; or failure to disclose any material facts regarding pre-need or prepaid arrangements, agreements or trusts; or
- (v) in circumstances where there is conflict in direction provided by authorizing agents of equal rank, it shall be considered unprofessional conduct for a licensee to proceed without requiring the parties to either come to agreement, or submit the matter for judicial resolution of the conflict. (History: 37-1-131, 37-1-136, 37-1-319, 37-19-202, MCA; IMP, 37-1-136, 37-1-316, MCA; NEW, 1982 MAR p. 2137, Eff. 12/17/82; AMD, 1988 MAR p. 2377, Eff. 11/11/88; AMD, 1989 MAR p. 225, Eff. 1/27/89; AMD, 1993 MAR p. 2670, Eff. 11/11/93; AMD, 1996 MAR p. 2425, Eff. 9/20/96; AMD, 2000 MAR p. 1630, Eff. 6/30/00; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.2302 LICENSEE RESPONSIBILITY IN CASE OF CRIME OR VIOLENCE IN CONNECTION WITH CAUSE OF DEATH (1) No person licensed for the practice of funeral service shall remove or embalm a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, until permission of the coroner or medical examiner or some other duly-qualified person acting in such capacity if there is no coroner or medical examiner, has first been obtained. (History: 37-1-136, 37-19-202, MCA; IMP, 37-1-136, 37-19-311, 37-19-404, MCA; NEW, 1982 MAR p. 2137, Eff. 12/17/82; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.2303 FREEDOM OF CHOICE RIGHTS OF NEXT OF KIN AND FAMILY (1) No public officer or employee, or the official of any public institution, or physician or surgeon, or any other person having a professional relationship with any decedent shall send or cause to be sent to any funeral establishment or to any person licensed for the practice of funeral service the remains of any deceased person without having first made due inquiry as to the desires of the next of kin and of the persons who may be chargeable with the funeral and expenses of such decedent. And if any such kin be found, his or her authority and directions shall govern.

(2) No company, corporation or association engaged in the business of paying or providing for the payment of the expenses of the funeral, disposition or other similar expenses of the deceased members or of certificate holders therein, or engaged in the business of providing any insurance upon the life of any individual, under which contract of insurance any obligation might or could arise to care for the remains of the insured, shall contract to pay or shall pay any such insurance or such benefits, or any part of either such insurance or benefits, to any funeral establishment or to any licensee or to any individual in any manner which might or could deprive the representative, next of kin or family of such deceased person from, or in way control them in procuring such funeral establishment, person licensed for the practice of funeral service or other proper and competent person to perform such necessary and proper services, and to furnish supplies as may be necessary and proper to care for the remains of such decedent as such representative, next of kin or family may desire.

(3) No person licensed for the practice of funeral service or anyone acting for him or her shall have any part in any transaction or business which in any way interferes with the freedom of choice of the general public to choose a person licensed for the practice of funeral service or to choose a funeral establishment except where the body or a part thereof is given for anatomical purposes. (History: 37-1-136, 37-19-202, MCA; IMP, 37-1-136, 37-19-311, 37-19-404, MCA; NEW, 1982 MAR p. 2137, Eff. 12/17/82; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.2304 UNLAWFUL PRACTICE (1) It shall be unlawful for any person, partnership, corporation or association who has not been licensed as specified in this act to transact, practice or hold himself or itself out as transacting or practicing funeral service, or operating or maintaining a funeral establishment within this state. (History: 37-1-136, 37-19-202, MCA; IMP, 37-1-136, 37-19-311, 37-19-404, MCA; NEW, 1982 MAR p. 2137, Eff. 12/17/82; TRANS, from Commerce, 2002 MAR p. 790.)

24.147.2305 SCREENING PANEL (1) The board chairman must be a member of the screening panel. The chairman will appoint the screening panel based on the individual complaint. The number of board members sitting on the panel may vary, but cannot exceed four members.

(2) The members sitting on the screening panel cannot sit on the disciplinary panel. (History: 37-19-202, MCA; IMP, 37-1-307, MCA; NEW, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790.)

Subchapter 24

Complaint Procedures

24.147.2401 COMPLAINT FILING (1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the department.

(3) Upon receipt of the written complaint form, the department shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation, or a finding of reasonable cause of violation of a statute or rule. The department shall notify both complainant and licensee of the determination made by the screening panel.

(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.

(5) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information. (History: 37-1-131, 37-19-202, MCA; IMP, 37-1-307, 37-1-308, 37-1-309, MCA; NEW, 1996 MAR p. 2425, Eff. 9/20/96; TRANS, from Commerce, 2002 MAR p. 790; AMD, 2006 MAR p. 1169, Eff. 5/5/06.)